

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JESSIE J. BARNES,

Plaintiff,

-against-

9:11-CV-0149 (LEK/RFT)

DAVID A. ROCK, *et al.*,

Defendants.

DECISION and ORDER

This action was commenced by *pro se* Plaintiff Jessie J. Barnes (“Plaintiff”) in February 2011. Dkt. No. 1 (“Complaint”). By Order of the Court, Plaintiff was granted leave to proceed *in forma pauperis*, and the U.S. Marshal was directed to effect service of process on the Defendants remaining after the Court’s *sua sponte* review of the Complaint in accordance with 28 U.S.C. § 1915(e) and 28 U.S.C. § 1915A. Dkt. No. 8.¹

On May 7, 2012, and in lieu of an answer, Defendants filed a Motion to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dkt. No. 48 (“Motion”).

Plaintiff has not responded in opposition to Defendant’s motion.² Plaintiff has, however, filed a letter request which states in relevant part as follows:

PLEASE TAKE NOTICE, that I am writing this notice to voluntarily discontinue this action with prejudice. I am voluntarily withdrawing this action.

Thank you for your consideration in this matter.

¹ Because Plaintiff did not provide the documents necessary for service of process until January 2012, service of process was not accomplished until February 2012. See Dkt. Nos. 13-30.

² At his request, Plaintiff’s deadline for responding in opposition to Defendants’ Motion to dismiss was reset to June 21, 2012. See Text Order filed May 18, 2012 (Treece, M.J.).

Dkt. No. 51.

Rule 41(a) of the Federal Rules of Civil Procedure provides that a plaintiff may dismiss an action without a court order by filing “a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment” FED. R. CIV. P. 41(a)(1)(A). Rule 41(a) further provides that “the dismissal is without prejudice” unless the notice provides otherwise. FED. R. CIV. P. 41(a)(1)(B).

As of the date of this Decision and Order, Defendants have not yet answered the Complaint or moved for summary judgment. Although Plaintiff expressly requested that his Complaint be dismissed with prejudice, Plaintiff is proceeding *pro se* and may not have been cognizant of the consequences of such a dismissal. In deference to Plaintiff’s *pro se* status, the Court therefore dismisses the Complaint without prejudice.

Accordingly, it is hereby:

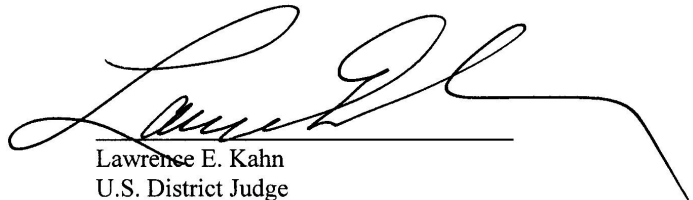
ORDERED, that Defendants’ Motion to dismiss (Dkt. No. 48) is **DENIED as moot**; and it is further

ORDERED, that in accordance with Plaintiff’s notice of voluntary dismissal (Dkt. No. 51), this action is **DISMISSED without prejudice**; and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on the parties.

IT IS SO ORDERED.

DATED: August 06, 2012
Albany, New York


Lawrence E. Kahn
U.S. District Judge